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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review and New Shipper Review:
Freshwater Crawfish Tail Meat from the People's Republic of
China

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review and a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The administrative review covers one exporter of subject merchandise, Xiping Opeck Food Co., Ltd. (Xiping Opeck). The new shipper review covers Hubei Nature Agriculture Industry Co., Ltd. (Hubei Nature). The period of review (POR) for the administrative and new shipper reviews is September 1, 2012, through August 31, 2013. We preliminarily determine that sales by Hubei Nature, and Xiping Opeck, have not been made below normal value (NV).

BACKGROUND

On September 15, 1997, the Department published an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC.¹ On September 3, 2013, the Department published a notice of opportunity to request an administrative review of the order.² On November 8, 2013, based on timely requests for an administrative review, the Department initiated an administrative review of eight exporters/producers.³ On December 13,

¹ See *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 48218 (September 15, 1997).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 54235 (September 3, 2013).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 67104 (November 8, 2013) (*Initiation Notice*).



2013, we selected Xiping Opeck, and Yancheng Hi-King for individual examination.⁴ On November 14, 2013, in response to requests from Hubei Nature and Hubei Zhenghe Food Co., Ltd (Hubei Zhenghe), we initiated new shipper reviews of the order on freshwater crawfish tail meat from the PRC with respect to these two companies.⁵ China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), Nanjing Genssen International Co., Ltd., (Nanjing) and Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang), which have separate rates, each reported that it did not have any exports of subject merchandise during the POR.⁶

On January 6, 2014, Hubei Zhenghe timely withdrew its request for an administrative review.⁷ On January 13, 2014, Hubei Zhenghe timely withdrew its request for a new shipper review.⁸ On February 6, 2014, the domestic interested party, the Crawfish Processors Alliance (CPA), timely withdrew its request for an administrative review for China Kingdom, Deyan Aquatic Products and Food Co. (Deyan Aquatic), Ltd., Nanjing Genssen, Shanghai Ocean, Xuzhou Jinjiang, and Yancheng Hi-King. As a result, the Department rescinded the review with respect to China Kingdom, Deyan Aquatic, Nanjing Genssen, Shanghai Ocean, Xuzhou Jinjiang, Yancheng Hi-King, and Hubei Zhenghe.⁹

On January 6, 2014, we aligned the new shipper review with the administrative review.¹⁰ On May 6, 2014, we extended the due dates for the preliminary results of the administrative review and new shipper review by 120 days to September 30, 2014.¹¹

We are conducting these reviews in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213 and 351.214.

⁴ See memorandum entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China – Respondent Selection” (December 19, 2012).

⁵ See *Freshwater Crawfish Tail Meat From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 78 FR 68411 (November 14, 2013) (*New-Shipper Initiation Notice*).

⁶ See no shipment letters filed by China Kingdom and Shanghai Ocean Flavor, dated November 14, 2012, Xuzhou Jinjiang, dated November 30, 2012, and Nanjing dated December 26, 2013.

⁷ See letter from Hubei Zhenghe to the Department, “Withdrawal of Review Request in Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People’s Republic of China, 09/01/2012-08/31/13” (January 6, 2014).

⁸ See letter from Hubei Zhenghe to the Department, “Withdrawal of Review Request in the New Shipper Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People’s Republic of China, 09/01/12-08/31/13” (September 30, 2013).

⁹ See *Freshwater Crawfish Tail Meat From the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review and Rescission of New Shipper Review; 2012-2013*, 79 FR 26711 (May 9, 2014).

¹⁰ See the memorandum to the file entitled “Alignment of New-Shipper Reviews of Freshwater Crawfish Tail Meat from the People’s Republic of China with the concurrent Administrative Review of Freshwater Crawfish Tail Meat from the People’s Republic of China” (January 6, 2014).

¹¹ See Memoranda entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews; 2012-2013” (May 6, 2014).

SCOPE OF THE ORDER

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. On February 10, 2012, the Department added HTSUS classification number 0306.29.01.00 to the scope description pursuant to a request by U.S. Customs and Border Protection (CBP). The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Bona Fides Analysis

Consistent with the Department's practice, we examined the *bona fides* of the sale in the new shipper review.¹² Evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, the Department considers, *inter alia*, such factors as: (a) the timing of the sale, (b) the price and quantity, (c) the expenses arising from the transaction, (d) whether the goods were resold at a profit, and (e) whether the transaction was made on an arm's-length basis.¹³ Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."¹⁴ In *TTPC*, the Court of International Trade (CIT) also affirmed the Department's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,¹⁵ and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.¹⁶ Finally, in *New Donghua*, the CIT affirmed the Department's practice of evaluating the circumstances surrounding a sale in a new shipper review so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.¹⁷ Where the Department finds that a sale is not *bona fide*, the Department will exclude the sale from its dumping margin calculations.¹⁸

¹² See, e.g., *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006) and accompanying Issues and Decision Memorandum (I&D Memo) at comment 1b.

¹³ See *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (*TTPC*).

¹⁴ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying I&D Memo at New Shipper Review of Clipper Manufacturing Ltd.).

¹⁵ See *TTPC*, 366 F. Supp. 2d at 1250.

¹⁶ *Id.* at 1263.

¹⁷ See *New Donghua*, 374 F. Supp. 2d at 1344.

¹⁸ See *TTPC*, 366 F. Supp. 2d at 1249.

Based on our analysis of the factors described above, we preliminarily find that Hubei Nature's U.S. sale is a *bona fide* transaction. Moreover, based on this finding, the company's responses to our questionnaires, and its eligibility for a separate rate (*see* the "Separate Rates" section of this notice below), we preliminarily determine that Hubei Nature qualifies as a new shipper during this POR.¹⁹

DISCUSSION OF THE METHODOLOGY

Non-Market Economy Country Status

The Department considers the PRC to be a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested NME treatment for the PRC. Therefore, for these preliminary results of administrative review and new shipper review, we treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

Surrogate Country

In antidumping duty proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, the Department generally bases NV on the value of the NME producer's factors of production (FOPs). In accordance with section 773(c)(4) of the Act, in valuing the FOPs the Department uses, to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are at the same level of economic development to that of the NME country and that are also significant producers of merchandise comparable to the subject merchandise. The Department determined that Colombia, Costa Rica, Indonesia, the Philippines, South Africa, and Thailand are countries that are at the same level of economic development to that of the PRC.²⁰ None of these countries are a significant producer of freshwater crawfish tail meat, but Indonesia and Thailand are significant producers of comparable merchandise, processed seafood.²¹

As stated in 19 CFR 351.408(c)(2), the Department's preference is to value FOPs in a single country. Thus, when there are multiple potential surrogate countries, the Department also looks to the availability of data in those countries.²² In this instance, publicly available data exist for valuing most of the FOPs in Thailand including, importantly, financial statements that can be used to calculate surrogate ratios for overhead, selling, general and administrative expenses

¹⁹ See the memorandum to the file entitled "New-Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China – *Bona Fides* Sales Analysis of Hubei and Food Co., Ltd." (September 30, 2014), for more details including certain business proprietary information.

²⁰ See memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat (FCTM) from the People's Republic of China (PRC)" (December 19, 2013).

²¹ See memorandum entitled, "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of Surrogate Country" (September 30, 2014) (Surrogate Country Memorandum).

²² See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, (March 1, 2004).

(SG&A), and profit.²³ Thus, the availability of factor values in Thailand relative to Indonesia, the other significant producer of comparable merchandise that is at the same economic level to the PRC, supports selecting Thailand as the primary surrogate country.²⁴

We are unable to value the whole crawfish input in any of the potential surrogate countries. Instead, we valued whole crawfish using the only information available on the record with respect to that input, *i.e.*, imports of crawfish into Spain as reported by *Agencia Tributaria*, the Spanish government agency responsible for trade statistics. Spain is a significant producer of freshwater crawfish and we relied on Spanish values in previous reviews.²⁵

Separate Rates

In antidumping duty proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate.²⁶ Thus, the Department will assign all exporters this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The Department assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by the Department and described in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and *Notice of Final Determination of Sales at Less Than Fair Value: Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

In *Initiation Notice* and *New-Shipper Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.²⁷ The Department received complete responses to the antidumping duty

²³ See memorandum entitled, “*Freshwater Crawfish Tail Meat from the People's Republic of China: Surrogate Value Memorandum*” (September 30, 2013) (Surrogate Value Memorandum).

²⁴ See *Folding Metal Tables and Chairs From the People's Republic of China: Final Results of 2007-2008 Deferred Antidumping Duty Administrative Review and Final Results of 2008-2009 Antidumping Duty Administrative Review*, 76 FR 2883 (January 18, 2011), and accompanying I&D Memo at comment 1(C).

²⁵ See, e.g., *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 34100 (June 16, 2010) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 79337 (December 20, 2010)); see also *Freshwater Crawfish Tail Meat From the People's Republic of China: Antidumping Duty Administrative; 2010-2011*, 77 FR 61383 (October 9, 2012) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and Partial Rescission; 2010-2011*, 78 FR 22228 (April 15, 2013)); see also *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 78 FR 61331 (October 3, 2013) (11/12 FCTM Prelim) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Review; 2011-2012*, 79 FR 22947 (April 25, 2014)) (11/12 FCTM Final).

²⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303 (May 22, 2006).

²⁷ See *Initiation Notice*, 78 FR at 67104-5, and *New-Shipper Initiation Notice*, 78 FR at 68412.

questionnaire from all respondents which contained information pertaining to the companies' eligibility for a separate rate.²⁸

Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.²⁹

The evidence provided by Hubei Nature, and Xiping Opeck supports a preliminary finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) legislative enactments decentralizing control of the companies; and (3) formal measures by the government decentralizing control of the companies.

Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC.³⁰ Therefore, the Department determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.³¹

Hubei Nature, and Xiping Opeck have each made the following assertions: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Therefore, based on the information on the record of these reviews, the Department preliminarily determines that there is an absence of *de facto* governmental control over the export activities of Hubei Nature, and Xiping Opeck.

²⁸ In the administrative review, Xiping Opeck also submitted a separate rate certification.

²⁹ See *Sparklers*, 56 FR at 20589.

³⁰ See *Silicon Carbide*, 59 FR at 22587.

³¹ See *Silicon Carbide*, 59 FR at 22586-87, and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

Given that the Department found that Hubei Nature and Xiping Opeck operate free of *de jure* and *de facto* governmental control, we preliminarily determine that they satisfied the criteria for a separate rate.

Fair Value Comparisons

To determine whether sales of subject merchandise by Hubei Nature and Xiping Opeck were made at less than NV, we compared their export prices (EP) to NV, as described in the “Export Price” and “Normal Value” sections below.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping duty investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping duty investigations.³² In recent investigations, the Department applied a “differential pricing” analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.³³ The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the

³² See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying I&D Memo at comment 1.

³³ See *Frontseating Service Valves From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 27954 (May 13, 2013); see also *Certain Steel Threaded Rod From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 21101 (April 9, 2013).

reported customer names. Regions are defined using the reported destination code (*i.e.*, city name, zip code, *etc.*) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each has at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this

demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Xiping Opeck, the value of U.S. sales passing the Cohen's *d* test is insignificant (*i.e.*, below 33 percent).³⁴ As such, the Department finds that these results do not support consideration of an alternative to the average-to-average method. Accordingly, for these preliminary results the Department determines to use the average-to-average method in making comparisons of EP and NV for Xiping Opeck.³⁵

U.S. Price

In accordance with section 772(a) of the Act, we based Hubei Nature's and Xiping Opeck's U.S. prices on EP because the record information indicates that the first sales to unaffiliated purchasers were made prior to importation and CEP was not otherwise warranted. For Hubei Nature and Xiping Opeck, we calculated EPs based on the packed, cost and freight price to the first unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, we calculated net EPs by deducting foreign inland-freight expenses and foreign brokerage and handling expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses for Xiping Opeck on surrogate values because a PRC vendor provided the movement (*see* the "Normal Value" section of this notice for further details). With regard to Hubei Nature, we based all movement expenses on surrogate values with the exception of Hubei Nature's international freight expense where we used the actual cost per kilogram of the freight because a market-economy company provided the movement and was paid in U.S. dollars.

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein "irrecoverable") value-added tax (VAT) in certain NME countries in accordance with section 772(c)(2)(B) of the Act.³⁶ The

³⁴ Hubei Nature did not have a sufficient number of sales to conduct the Cohen's *d* test.

³⁵ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Final Modification for Reviews*. In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

³⁶ *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012) (*Methodological Change*).

Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.³⁷ Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.³⁸

The Department's methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount (or rate) determined in step one. Information placed on the record of this review by respondents indicate that according to the PRC VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 15 percent.³⁹ For the purposes of these preliminary results, therefore, we removed from U.S. price the difference between the VAT rate and the rebate rate (*i.e.*, two percent), which is the irrecoverable VAT as defined under PRC tax law and regulation.⁴⁰

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies.⁴¹

In accordance with section 773(c) of the Act, we relied on the FOP data reported by Hubei Nature and Xiping Opeck for the POR. We calculated NV by adding together values for the FOPs, general expenses, profit, and packing costs. Specifically, we valued materials, labor, and packing by multiplying the reported per-unit rates for the FOPs consumed in producing the subject merchandise by the average per-unit surrogate values described below. We added freight costs for the material inputs. We calculated the freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States Court of Appeals for the Federal Circuit in *Sigma Corp. v. United*

³⁷ *Id.*; see also *Chlorinate Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying I&D Memo at Comment 5.A.

³⁸ *Id.*

³⁹ See Xiping Opeck's June 12, 2014, submission at 6-9, and Hubei Nature's July 7, 2014, submission at 13-14.

⁴⁰ *Id.*, at Exhibit SC-1.

⁴¹ See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006)).

States, 117 F.3d 1401, 1407-1408 (Fed. Cir. 1997). We increased the calculated costs of the FOPs by adding surrogate general expenses and profit.⁴²

Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data. For these preliminary results, in selecting the best available data for valuing FOPs in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.⁴³ We also considered the quality of the source of surrogate information in selecting surrogate values.⁴⁴ For those surrogate values which are not contemporaneous with the POR, we adjusted for inflation using country-specific consumer prices (CPI), whole-sale prices (WPI) or purchase price indices (PPIs) as reported in the *International Financial Statistics* and published by the International Monetary Fund.⁴⁵

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.⁴⁶ In this regard, we previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, we find that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.⁴⁷ Additionally, we disregarded prices from NME countries.⁴⁸

⁴² See Surrogate Value Memorandum.

⁴³ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004)).

⁴⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625, 55633 (November 8, 1994).

⁴⁵ See Surrogate Value Memorandum.

⁴⁶ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.

⁴⁷ See, e.g., *Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent To Rescind Administrative Review, in Part*, 76 FR 12324, 12334 (March 7, 2011) (unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part*, 76 FR 56397 (September 13, 2011)).

⁴⁸ See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9600 (March 5, 2009) (unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009)).

We used the following surrogate values in our margin calculations for these preliminary results of review. We valued whole crawfish using the publicly available contemporaneous data for Spanish imports of whole crawfish from Portugal. We valued the crawfish shell by-product using a 2001 price quote from Indonesia for wet crab and shrimp shells and inflated this value using the Indonesian WPI to make it contemporaneous with the POR.

We used *Global Trade Atlas* online data to value packing materials. We valued water using data published by the Metropolitan Waterworks Authority of Thailand specific to prices charged to Commerce, Government Agency, State Enterprise and Industry, which is available at <http://www.mwa.co.th>. Although this source states that the published prices are effective as of December 1999 there is no information to indicate that these prices are not still in effect. Therefore, we have not inflated this value for these preliminary results.

We valued non-refrigerated truck freight using the World Bank's *Doing Business 2014: Thailand* located at <http://www.doingbusiness.org>, which we find to be contemporaneous, specific to the cost of shipping goods in Thailand, and representative of a broad market average.⁴⁹ Because we could not find any reliable information from Indonesia, Thailand, or any of the four other countries determined to be economically comparable to the PRC,⁵⁰ we valued refrigerated truck freight based on price quotations from CTC Freight Carriers of Delhi, India, dated April 30, 2004, placed originally on the record of the 2009-2010 administrative review.⁵¹ To make it contemporaneous with the POR, we inflated this value using the Indian PPI.

We valued brokerage and handling expenses using the information in the World Bank Group's *Doing Business 2014 – Thailand*. This source provides a price list based on a survey case study of the procedural requirements necessary to export a standardized cargo of goods by ocean transit from Thailand. Because data reported in this source was current and, thus, contemporaneous with the POR, no adjustment was necessary.

We valued international freight using the data obtained from the Descartes Carrier Rate Retrieval Database (Descartes) which is available at <http://descartes.com/>. The Descartes database is a web-based service which publishes the ocean freight rates of numerous carriers. In prior administrative reviews the Department did not use the Descartes database to value ocean freight because the data did not appear to be publicly available.⁵² Upon reexamination, however, we have found that this database is accessible to government agencies without charge in compliance with Federal Maritime Commission regulations and, thus, we now find that this is a publicly available source.

⁴⁹ See Surrogate Value Memorandum.

⁵⁰ *Id.*

⁵¹ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 76 FR 62349 (October 7, 2011) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 77 FR 21529 (April 10, 2012)).

⁵² See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006), and accompanying I&D Memo at comment 7.

In addition to being publicly available, the Descartes data reflect rates for multiple carriers, the website reports rates on a daily basis, the price data are based on routes that correspond closely to those used by the respondents, and they reflect merchandise similar to subject merchandise. Therefore, the Descartes data are product-specific, publicly available, reflective of a broad-market average, and contemporaneous with the POR. Accordingly, we find that the Descartes database is the best available source for valuing international freight on the record of this review because it provides rates that are representative of the entire POR.

While we find that the Descartes database is the superior source on the record of the reviews for valuing international freight, to make the source less impractical, we had to define certain parameters in our selection of data. For example, we calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the POR. Further, we did not include rates in the period-average international freight calculation that we determined were from NME carriers. Additionally, we excluded from any individual rate calculation any charges that are covered by the brokerage and handling expenses that the respondent incurred and which are valued by the appropriate surrogate value.⁵³

On June 21, 2011, the Department announced its new methodology to value the cost of labor in NME countries.⁵⁴ In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (Yearbook), as compared to Chapter 5B data of the ILO Yearbook, was the preferred source where another source was not more appropriate.

In these preliminary results, the Department calculated the labor input using data from the 2012 Industrial Census data published by Thailand's National Statistics Office (the "2012 NSO data").⁵⁵ Although the 2012 NSO data are not from the ILO, the Department finds that this fact does not preclude us from using this source for valuing labor. In *Labor Methodologies*, the Department decided to change the use of the ILO Chapter 6A data from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.⁵⁶ The Department did not, however, preclude all other sources for evaluating labor costs in NME antidumping duty proceedings. Rather, we continue to follow our practice of selecting the "best information available" to determine SVs for inputs such as labor. Thus, we find that the 2012 NSO data are the best available information for valuing labor for this segment of the proceeding. Specifically, the 2012 NSO data are more contemporaneous than the ILO Chapter 6A data from Thailand. Additionally, the NSO data are publicly available, industry-specific, reflect all costs related to labor, including wages, benefits, housing, and

⁵³ See Surrogate Value Memorandum.

⁵⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). This notice followed the Court of Appeals for the Federal Circuit decision in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (CAFC 2010), finding that the "{regression-based} method for calculating wage rates {as stipulated by 19 CFR 351.408(c)(3)} uses data not permitted by {the statutory requirements laid out in section 773 of the Act (i.e., 19 U.S.C. § 1677b(c))}."

⁵⁵ See Surrogate Values Memorandum.

⁵⁶ See *Labor Methodologies*.

training. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Values Memorandum.


Finally, we valued factory SG&A, and profit by averaging the results taken from the 2013 financial statements of two Thai producers of processed seafood. Because these financial statements do not separately identify energy expenses, we have not calculated a value for the respondents' energy inputs.⁵⁷

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

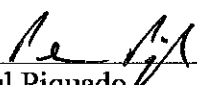
Recommendation

We recommend applying the above methodology for these preliminary results.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 SEPTEMBER 2014
(Date)

⁵⁷ When the Department is unable to segregate and, therefore, exclude energy costs from the calculation of the surrogate overhead ratio, it is the Department's practice to disregard the respondents' energy inputs in the calculation of normal value in order to avoid double-counting energy costs which have necessarily been captured in the surrogate financial ratios. See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838, 16839 (April 13, 2009), and accompanying I&D Memo at comment 2.